IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

United India Insurance Co. Ltd. Vs. Babulal & another

S.B.CIVIL MISC. APPEAL NO. 658/2005
Against the award dated 18.10.2004 made by the Motor Accidents Claims Tribunal, Nimbahera in Claim Case No.106/1993.

Date of Judgment : 21.07.2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.R.K.Mehta for the appellant
Mr.Dinesh Sharma for the respondent No.1
Mr.Roshanlal for the respondent No.2.

Reportable **BY THE COURT:**

Though listed for final orders on stay application, at the request of learned counsel for the parties and in view of short question involved, the matter has been heard finally.

This is insurer's appeal against the award dated 18.10.2004 made by the Motor Accidents Claims Tribunal, Nimbahera in Claim Case No.106/1993 particularly questioning the quantum of compensation awarded by the Tribunal.

Brief facts relevant for determination of the questions involved in this case are that Smt.Rami, aged 23 years, wife of claimant-respondent No.1 Babulal was hit and crushed by the offending truck bearing registration No.RJC 1655 on 08.12.1988 at 3.30 p.m. near Hoda Circle District Chittorgarh. The claimant, husband of deceased, made application seeking compensation on account of accidental death of his wife. The proceedings against driver of the truck were dropped on his death; the owner of the vehicle remained ex parte; and the insurer contested the matter. The claimant examined himself as AW-1 and another witness Hari Shanker as AW-2 and produced relevant documentary evidence. No evidence was led on behalf of the non-applicant. After consideration of the evidence on record, the learned Judge of the Tribunal found on issue No.1 the said accident having occurred for rash and negligent driving of the truck RJC 1655 and the deceased having been crushed under the truck. The ground taken by the Insurance Company regarding want of valid driving licence of the driver was not countenanced for want of evidence.

Taking up quantification of compensation, the learned Judge observed that the deceased was extending help to the claimant in labour, agriculture, milk business and so also in the household and took her income at Rs.60/- per day and took loss of contribution at Rs.1,200/- per month i.e. Rs.14,400/-

per annum and applying a multiplier of 12 assessed pecuniary loss at Rs.1,72,800/-. Learned Judge further allowed Rs.5,000/- for loss of consortium and Rs.2,000/- for funeral expenses and made the award in the sum of Rs.1,79,800/- and also awarded interest at the rate of 9% per annum in favour of the claimant from the date of filing of claim application i.e. 22.02.1989.

Learned counsel Mr.R.K.Mehta appearing for the appellant-insurer has contended that the award remains excessive on quantification of compensation and the Tribunal was seriously in error in allowing interest at the rate of 9% per annum from the date of filing of claim application without considering that the claim application had been dismissed in default on 12.03.1997 and was restored only on 04.01.2004 and the appellant Insurance Company who was impleaded as party only on 12.05.2004 ought not to have been made liable for interest prior to the date it was impleaded. Learned counsel further contended that claimant has admittedly contracted second marriage after 4-5 years of the demise of the victim and, therefore, the Tribunal ought not to have awarded any amount beyond such period of widowerhood of the claimant. Learned counsel for the respondent-claimant Mr.Dinesh Sharma has supported the impugned award with the submissions that in view of loss of his wife in his prime

youth, the claimant has rightly been allowed compensation on the basis of loss of contribution at Rs.14,400/- per annum and in fact the Tribunal has applied a multiplier of 12 only whereas in the circumstances of the case, the multiplier of 17 minimum ought to have been applied and the award on its quantification remains rather on the lower side and needs no interference in this appeal by the insurer. Learned counsel submitted that merely because the insurer was impleaded later, the claimant cannot be deprived of reasonable interest on the award amount.

Having heard learned counsel for the parties and having perused the material placed on record, this Court is clearly of opinion that so far the assessment of the loss is concerned, the impugned award remains rather on the lower side and needs no interference.

The deceased was 23 years of age and the claimant lost his wife in his prime youth. Even if the claimant contracted second marriage after 4-5 years of the death of victim, the assessment of loss cannot ipso facto be restricted only to period of widowerhood; and the claimant cannot be deprived of just compensation available to him. The claimant under the force of circumstances has contracted second marriage and that cannot compensate against the entire loss occasioned to the claimant on account of accidental death of his wife. This

Court is of opinion that it cannot be adopted as an abstract principle that in the case of accidental demise of a spouse, the surviving one has to be awarded compensation only for the period till he or she remarries. Such a proposition would hardly be compatible with the very basics of a civic society and the institution of marriage. Apart from reciprocal dependency, each of the partners in the marriage relationship is presumed to be contributing towards common goal of bringing about, maintaining and nourishing a family and developing the family estate. The loss caused by removal of one such partner because of misdeeds of a tortfeasor cannot be taken limited only to the period till the surviving one ties with another partner in place of the victim nor a tortfeasor could escape his liability with reference to subsequent marriage by the surviving spouse. This Court recently in S.B.Civil Misc. Appeal No.490/1994: Harchand Ram and others Vs. Ummed Singh and others, decided on 13.07.2006 has not countenanced the proposition adopted by the Tribunal for restricting compensation with reference to second marriage by the claimant five years after accidental death of his wife who left behind two minor children too. In another S.B. Civil Misc. Appeal No.464/1993: Parasmal Oswal and others Vs. Gurucharan Singh and others, also decided on 13.07.2006 this court has not approved the denial by the Tribunal of

compensation beyond two years of her widowhood to a young widow claimant. This court has held,-

> "This Court is clearly of opinion that even when the widow has remarried, the compensation amount in a fatal accident claims case cannot be restricted to the period of widowhood only with reference to the factum of remarriage."

The basic principles aforesaid with relevant variations do apply to the case of a widower too; and on account of demise of the victim the loss to the family and the dent in the status of the surviving husband, even if entering into second marriage, cannot be ignored.

Moreover, so far the liability of a tortfeasor for compensation is concerned, this Court is clearly of opinion that the factors that have come into existence only because of accidental death of a person, like subsequent marriage of the surviving spouse, cannot operate against the claimant and in favour of the tortfeasor. Second marriage by a widower may be considered as one of the factors while arriving at the ultimate figure of just compensation but cannot in itself be taken sufficient to deny compensation beyond the period of widowerhood altogether.

In the present case, the Tribunal has taken very reasonable view of the matter in estimating the income of the deceased at Rs.60/- per day and taking a figure of loss of contribution at Rs.1200/- per month and then has rationalised

the award by applying a multiplier of 12 only leading to a pecuniary loss figure of Rs.1,72,800/- and even if the multiplicand has been a bit higher at Rs.14,400/-, the application of multiplier of 12 has resulted in arriving at a reasonable and just figure of pecuniary loss. The Tribunal has not awarded any exorbitant amount towards loss of consortium and has merely allowed Rs.5,000/- under this head. This Court is of opinion that in the facts and circumstances of this case particularly for the loss of his wife in youthful age of about 25 years, the claimant could have been awarded higher amount towards loss of consortium. In that view of the matter, this Court is satisfied that the award in question remains moderate and rather on the lower side and cannot be said to be excessive so as to warrant interference in appeal.

So far the rate of interest is concerned, during the course of submissions, Mr. Dinesh Sharma learned counsel appearing for the claimant, in all fairness, did not attempt to justify the rate of interest at 9% per annum from the date of application and submitted that a reasonable rate of interest may be allowed to the claimant. Though Mr.R.K.Mehta learned counsel appearing for the insurer has argued that interest ought to have been allowed only from the date the insurer was impleaded as party, however, this Court is of opinion that interest to be allowed for deprivation of the

amount, ought not to be denied to the claimant altogether for all the years of pendency of the claim application. Of course it is true that claim application is alleged to have been dismissed in default in the year 1997 and restored only in the year 2004 and having regard to all the circumstances, this Court is of opinion that the rate of interest allowed by the impugned award if reduced to 6% per annum and made applicable from the date of claim application, the same would serve the cause of justice. The claim application was made in the year 1989 and if the award would have been made within the relevant period, may be the rate of interest at 9% or 12% per annum could have been allowed by the Tribunal, however, having regard to the facts of dismissal of claim in default and restoration after a long time and insurer having been impleaded later, it appears appropriate that in the overall circumstances, rate of interest be thoroughly reduced to 6% per annum.

As a result of the aforesaid, this appeal is partly allowed; though the award on its quantification of compensation is not disturbed, however, the award is modified so far the rate of interest is concerned and in place of interest @ 9% per annum, the claimant would be entitled to interest @ 6% per annum from the date of filing of claim application. The appellant shall deposit the amount payable under the modified

award within 30 days from today with the Tribunal. The Tribunal shall proceed to apportion the award amount for cash payment and term deposit in the manner and proportion as contemplated by the impugned award. There shall be no order as to costs of this appeal.

(DINESH MAHESHWARI), J.

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